

### **REMARKS**

Entry of this amendment and reconsideration of the present application, as amended, are respectfully requested.

Claims 1-36 and new claims 37-40 are presently active in this application.

#### **Information Disclosure Statement**

The Examiner indicated that the Information Disclosure Statement filed on November 10, 1999 failed to comply with the provisions of 37 C.F.R. §1.98(a)(2) because it was missing copies of the references.

The Examiner's attention is directed to MPEP §609, section A(2), Legible Copies. One exception to the general rule that a copy of each reference must be submitted is if a copy of the reference was previously cited by or submitted to the Patent Office in a prior application relied upon for an earlier filing date under 35 U.S.C. §120. In this case, the parent application, U.S. patent application Serial No. 09/047,703, is being relied upon for an earlier filing date under 35 U.S.C. §120 (see the Declaration/Power of Attorney) and most of the references listed in the PTO-1449 were cited by or submitted to the Patent Office in connection with that application (or possibly earlier applications of which the benefit of the filing date is claimed under 35 U.S.C. §120). Thus, the failure to submit a copy of each reference does not amount to a failure to comply with the provisions of 37 C.F.R. §1.98(a)(2).

Moreover, twelve (12) references were submitted with the Information Disclosure Statement as these references were not cited during the prosecution of the parent application. There is absolutely no reason why the Examiner could not consider at least these twelve references.

In sum, the Information Disclosure Statement filed November 10, 1999 was in compliance with the provisions of 37 C.F.R. §1.98(a)(2) and there is no reason for the Examiner's failure to consider the references cited therein.

However, in the event that copies of the references are unavailable in the parent application, submitted herewith is a copy of each reference not cited by the Examiner (or an Abstract thereof-for two of the Japanese references). It is asserted that no fee is due for the submission of copies of these references in view of the foregoing. If otherwise, the Examiner is respectfully requested to contact the undersigned.

#### Rejection of Claim 9 under 35 U.S.C. §112

Claim 9 has been amended to overcome the rejection under 35 U.S.C. §112, second paragraph, and now provides sufficient antecedent basis for the terms used in the claim. (Claims 27 and 35 were similarly amended.)

In view of the changes to claim 9, it is respectfully submitted that the Examiner's rejection thereof under 35 U.S.C. §112, second paragraph, has been overcome and should be removed.

#### Judicially Created Doctrine of Double Patenting Rejection

Claims 1-36 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Pat. Nos. 5,653,462, 5,829,782, 5,848,802 and 6,039,139.

Submitted herewith is a Terminal Disclaimer disclaiming the terminal part of any patent granted on this application which would extend beyond the term of U.S. Pat. Nos. 5,653,462, 5,829,782, 5,848,802 and 6,039,139. The appropriate fee for submission of a Terminal Disclaimer is to be charged to the current assignee's Deposit Account.

In view of the submission of the Terminal Disclaimer, the double patenting rejections have been overcome and should be removed.

#### Rejections on the Merits

##### Claims 1, 10, 20, 28 and 36

Claims 1, 10, 20, 28 and 36 were rejected under 35 U.S.C. §102(b) as being anticipated by Thompson et al. (U.S. Pat. No. 6,020,812).

The present application claims the benefit of earlier filing dates under 35 U.S.C. §120 and since these earlier filing dates predate the earliest filing date of Thompson et al., Thompson et al. should not constitute prior art as to claims 1, 10, 20, 28 and 36.

More specifically, the present application claims the benefit of the filing date of U.S. patent application Ser. No. 08/239,978 filed May 9, 1994 through U.S. patent application Ser. No. 08/640,068 filed April 30, 1996 (now U.S. Pat. No. 5,829,782) and the benefit of the filing date of U.S. patent application Ser. No. 08/040,978 filed March 31, 1993 through U.S. patent application Ser. No. 08/5050,036 filed July 21, 1995 (now U.S. Pat. No. 5,653,462). This is set forth in the specification at page 1, lines 6-15 and is referred to in the Declaration/Power of Attorney. The subject matter of at least claims 1, 10, 20, 28 and 36 is disclosed in these earlier applications. For example, with reference to the '782 patent, the inventions of claims 1, 10, 20, 28 and 36 are discussed at col. 5, lines 38-42 and col. 13, lines 1-11 with reference to Fig. 9. Moreover, the Examiner took the position, when addressing the double patenting rejection, that the claimed subject matter in the instant application is fully disclosed in the '782 patent and the '462 patent. *certified*

Thus, since the earliest effective filing date of Thompson et al. is June 26, 1995 (the filing date of the parent application Ser. No. 08/495,057), after the May 9, 1994 filing date of the '978

application and the March 31, 1993 filing date of the '978 application, Thompson should not be available as prior art.

In view of the foregoing, the Examiner's rejection of claims 1, 10, 20, 28 and 36 under 35 U.S.C. §102(b) as being anticipated by Thompson et al. has been overcome and should be removed.

Claims 2-9, 11-19 and 21-35

Claims 2-9, 11-19 and 21-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Thompson et al. in view of Varga et al. (U.S. Pat. No. 5,943,295).

As noted above, the present application claims the benefit of earlier filing dates under 35 U.S.C. §120. These earlier filing dates predate the earliest filing date of Thompson et al. and Varga et al. (the earliest filing date of Varga et al. is February 6, 1996) and therefore Thompson et al. and Varga et al. should not constitute prior art as to claims 2-9, 11-19 and 21-35 because the subject matter of these claims is believed to be disclosed in the earlier applications. Indeed, the Examiner took the position that the claimed subject matter in the instant application is fully disclosed in the '782 patent and the '462 patent.

In view of the foregoing, the Examiner's rejection of claims 2-9, 11-19 and 21-35 under 35 U.S.C. §103(a) as being unpatentable in view of Thompson et al. and Varga et al. has been overcome and should be removed.

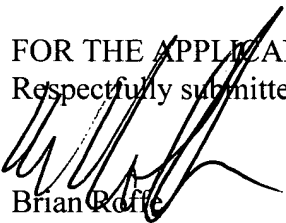
Other

With respect to the "special" status of the application, this Amendment is being promptly submitted and it is believed that all of the points raised by the Examiner in the Action have been addressed above and therefore the application should now be in condition for allowance. As

such, it is not believed that it is necessary to conduct an interview to place the application in condition for allowance.

An early and favorable action on the merits is earnestly solicited.

FOR THE APPLICANTS  
Respectfully submitted,



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Enc.  
Fee Transmittal Sheet  
Terminal Disclaimer  
43 References